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[ISB No. 3585]

Attorney for the Idaho State Tax Commission

FILED JUL 21 2004 PM 10:51 NOTICE

ORIGINAL

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF IDAHO**

IN RE:

GERALD LINDSEY and  
ONA LINDSEY,  
  
Debtors.

Case No. CV-03-21652

**RESPONSE TO DEBTOR'S  
OBJECTION TO CLAIM AND  
NOTICE**

TO: Brit Groom  
Brit D. Groom, Chtd  
P.O. Box 227  
Cottonwood, Idaho 83522

The Idaho State Tax Commission hereby responds to the Debtors' Objection to Claim and Notice filed on July 23, 2004. The debtors object because the Commission did not provide any supporting documentation to its claim and several of the claims are duplicates.

With respect to the second point, attached hereto as Exhibit A, is the most recent claim the Commission has filed. This claim supersedes all other claims filed by the Commission. The debtors in this case have filed tax returns which require the Commission to amend its claim to be consistent with the debtors state liability.

With respect to the objection that the Commission has not provided any supporting documentation, attached hereto as Exhibit B is a true and correct copy of an administrative decision dated January 2, 2003 that provides the basis of the claim. This decision was mailed to the debtors on January 3, 2003.

For these reasons, the objection of the debtors should be overruled.

DATED this 10<sup>th</sup> day of August, 2004.

  
BRIAN D. NICHOLAS  
DEPUTY ATTORNEY GENERAL

CERTIFICATE OF SERVICE

I hereby certify that I have on this 10<sup>th</sup> day of August, 2004, served a copy of within and foregoing RESPONSE TO DEBTOR'S OBJECTION TO CLAIM AND NOTICE by sending the same by United States mail, postage prepaid, in an envelope addressed to:

Brit Groom  
Brit D. Groom, Chtd.  
P.O. Box 227  
Cottonwood, Idaho 83522

U.S. Trustee  
304 N. 8<sup>th</sup> St., Suite 347  
Boise, Idaho 83701

Ford Elsacsser  
Attorney at Law  
P.O. Box 1049  
Sandpoint, Idaho 83864

Danny J. Radakovich  
Attorney at Law  
1625 G St.  
Lewiston, Idaho 83501


Jennifer d. Auchterlonie  
Trial Attorney, Tax Division  
U.S. Dept of Justice  
P.O. Box 683, Ben Franklin Station  
Washington, D.C. 2004-0683

Barry McHugh, Bruce Anderson &  
Taeya Howell  
Attorney at Law  
1400 Northwood Center Court, Ste C  
Coeur d'Alene Idaho 83814

Warren S. Derbidge  
U.S. Attorney Office  
P.O. Box 32  
Boise, Idaho 83707

Stephen B. McCrea  
Attorney at Law  
P.O. Box 1501  
Coeur d'Alenc, Idaho 83814

Sheila Schwager  
Hawley, Troxell, Ennis & Hawley LLP  
P.O. Box 1617  
Boise, Idaho 83701-1617

  
BRIAN D. NICHOLAS  
DEPUTY ATTORNEY GENERAL

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of	)	
	)	DOCKET NO. 16549
GERALD AND ONA LINDSEY,	)	
	)	DECISION
Petitioners.	)	
	)	

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On March 13, 2002, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to Gerald A. and Ona L. Lindsey (taxpayers), proposing income tax, penalty, and interest for the taxable years 1997 through 1999 in the total amount of \$526,091.

On April 27, 2002, the taxpayers filed a timely appeal and petition for redetermination. The taxpayers did not request a hearing but rather chose to provide additional information for the Tax Commission to consider. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) received information from the Internal Revenue Service (IRS) that showed changes the IRS made to the taxpayers' federal income tax returns for the tax years 1997 and 1998. The Bureau reviewed the changes and determined the changes were applicable to the taxpayers' Idaho income tax returns. The Bureau adjusted the taxpayers' returns and sent the taxpayers a Notice of Deficiency Determination.

The taxpayers protested the Bureau's determination stating that among other things they gave their consent to rescind the Notice of Deficiency Determination issued by the IRS. The taxpayers also stated they demanded a request for abatement of the IRS assessment and that all taxing agencies lack jurisdiction until the Secretary of Treasury makes a final determination. The taxpayers stated they have not received a final decision from the Secretary of Treasury.

In addition, the taxpayers claimed that the IRS declined or failed to apply the correct "source" of income it is alleging to be taxable.

The Bureau acknowledged the taxpayers' protest and forwarded the matter for administrative review. The Tax Commission sent the taxpayers a letter giving them two options for having the Notice of Deficiency Determination redetermined. The taxpayers chose to provide additional documentation which was filed with the IRS to show the issue was still pending with the IRS. The taxpayers stated it was their position that the dispute with the IRS has not yet been concluded.

The taxpayers provided the additional documentation and the Tax Commission made further inquiry with the IRS. The taxpayers stated the documents they provided show that the Secretary of Treasury has specifically abated the alleged deficiency pursuant to Title 26 USC Section 6213(b)(2)(A), and therefore, the claim of the Idaho State Tax Commission is based on erroneous information.

The taxpayers' documentation is a form letter addressed to the Secretary of Treasury and the Department of Treasury, Internal Revenue Service. The form letter is titled Consent to Rescind Notice of Deficiency Alternate Claim for Abatement. In the letter the taxpayers gave their consent to the Secretary to rescind the Notice of Deficiency Determination addressed to Gerald & Ona Lindsey dated June 18, 2001 for the tax years 1997 and 1998. The taxpayers gave their consent as provided for in Internal Revenue Code (IRC) section 6212(d). In addition, the taxpayers demanded per IRC section 6213(b)(2)(A) that the Secretary abate the same Notice of Deficiency Determination. The taxpayers apparently believe that by doing this they have effectively quashed any action taken by the IRS.

IRC section 6212(d) gives the Secretary the ability to rescind a notice of deficiency with the consent of the taxpayer. This is an action initiated by the Secretary, not by the taxpayer. The fact that the taxpayers in this case have given their consent to the Secretary to rescind the notice of deficiency does not mean that the Secretary is required to do so. The record contains no evidence that the Secretary wanted to rescind the notice of deficiency or requested the consent of the taxpayers.

The taxpayers demanded abatement of the Secretary's assessment as provided for in IRC section 6213(b)(2)(A). However, this section of the IRC deals specifically with assessment notices arising from mathematical or clerical errors on taxpayers' returns. The subsection quoted by the taxpayers refers to paragraph (1) in section 6213(b). That paragraph states that assessments made because of mathematical or clerical errors cannot be petitioned to the Tax Court. However, paragraph (2)(A) states that a taxpayer can ask the Secretary to abate the assessment for mathematical or clerical errors and the Secretary shall abate the assessment. After the abatement, any reassessment subsequent to the abatement must then follow the deficiency procedures.

The taxpayers did make the request for abatement. However, the taxpayers did not receive an assessment notice for mathematical or clerical errors. The taxpayers received a notice of deficiency determination from the IRS, which does not come under the purview of IRC section 6213(b)(2)(A).

In addition to the aforementioned, the Tax Commission obtained updated information from the IRS. That information showed the same adjustments as what the Bureau made to the taxpayers' Idaho income tax returns and that the IRS has not made any retraction of the adjustments.

Idaho Code section 63-3002 states that the measurement of Idaho taxable income is to be identical to federal taxable income. Therefore, if a change was made to federal taxable income, that same change should be applicable to Idaho taxable income. The Tax Commission finds that the adjustments the Bureau made were appropriate to bring the taxpayers' Idaho returns in to compliance with Idaho Code section 63-3002.

The taxpayers claimed that the federal adjustments were not a final federal determination. They stated the Secretary of Treasury has not concluded its investigation, hearings or issued any final assessments. The taxpayers provided the Tax Commission with a copy of the documents sent to the various agencies of the federal government to support their argument.

The Tax Commission reviewed the information and noted the date on the copies of the documents submitted by the taxpayers. The documents were dated August 9, 2001. In the information the Tax Commission received from the IRS was a document sent to the taxpayers on August 17, 2001 addressing the documents the taxpayers sent to the IRS on August 9, 2001. The IRS responded stating that it considered the information provided and that the information did not justify a change to the proposed adjustments. Therefore, the Tax Commission finds no evidence that supports the notion that there was not a final federal determination.

Included in the federal audit adjustments was a change to the taxpayers' net operating loss carryover. The adjustment reduced the taxpayers' net operating loss to zero. Since the taxpayers' net operating loss was fully absorbed or eliminated in an earlier year, there is no net operating loss carryover to 1999. Therefore, the Tax Commission upholds the Bureau's adjustment to the taxpayers' 1999 Idaho income tax return.

WHEREFORE, the Notice of Deficiency Determination dated March 13, 2002, is hereby APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayers pay the following tax, penalty, and interest:

<u>YEAR</u>	<u>TAX</u>	<u>PENALTY</u>	<u>INTEREST</u>	<u>TOTAL</u>
1997	\$113,445	\$28,361	\$41,668	\$183,474
1998	266,892	13,345	77,425	357,662
1999	3,797	949	896	<u>5,642</u>
			TOTAL DUE	<u>\$546,778</u>

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayers' rights to appeal this decision is enclosed with this decision.

DATED this 2<sup>nd</sup> day of January, 2002.

IDAHO STATE TAX COMMISSION

Calvin Grant  
COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this 3<sup>rd</sup> day of January, 2002, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

GERALD & ONA LINDSEY  
C/O G. & O. LINDSEY  
801 WOODSIDE RD STE 14-404  
REDWOOD CITY, CA 94061

Receipt No. 7000 0520 0022 1340 9531

Maria E. Baldas



COPY

FORM B10 (STC FORM 10) (1/02)

United States Bankruptcy Court District of IDAHO • Sub-district of MOSCOW		<b>PROOF OF CLAIM</b> <small>THIS SPACE IS FOR COURT USE ONLY</small>												
Name of Debtor(s): <div style="text-align: center;">GERALD LINDSEY  ONA LINDSEY</div>	Case Number: <div style="text-align: center;">03-21652</div>	<div style="text-align: right; font-size: 1.2em;">04 AUG -3 PM 2:17</div> <div style="text-align: right;">REC'D _____ CAMERON S. BURKE CLERK IDAHO</div>												
	Chapter: <div style="text-align: center;">7A</div>													
	Trustee: <div style="text-align: center;">J FORD ELSAESSER JR</div>													
NOTE: This form should not be used to make a claim for an administrative expense arising after the commencement of the case. A "request" for payment of an administrative expense may be filed pursuant to U.S.C. §503														
Name of Creditor (The person or other entity to whom the debtor owes money or property): <div style="text-align: center;"><b>Idaho State Tax Commission</b></div>	<input type="checkbox"/> Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.  <input type="checkbox"/> Check box if you have never received any notices from the bankruptcy court in this case.  <input type="checkbox"/> Check box if the address differs from the address on the envelope.													
Name and address where notices should be sent: <div style="text-align: center;">Idaho State Tax Commission Bankruptcy Unit P.O. Box 36 Boise, ID 83722</div>														
Account or other number by which identifies debtor: <div style="text-align: center;">SEE ATTACHMENT</div>	Check below if this claim: <input type="checkbox"/> Replaces a previously filed claim dated: <input checked="" type="checkbox"/> Amends a previously filed claim dated: 02/18/2004													
<b>1. Basis for Claim</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input type="checkbox"/> Goods sold  <input type="checkbox"/> Services performed  <input type="checkbox"/> Money loaned  <input type="checkbox"/> Personal injury/wrongful death  <input checked="" type="checkbox"/> Taxes  <input type="checkbox"/> Other         </div> <div style="width: 50%;"> <input type="checkbox"/> Retiree benefits as defined in 11 U.S.C. §1114  <input type="checkbox"/> Wages, Salaries and compensation (fill out below)            Your SS #: _____            Unpaid compensation for services performed from _____ (date) to _____ (date)         </div> </div>														
<b>2. Date debt was incurred:</b> <div style="text-align: center;">SEE ATTACHMENT</div>		<b>3. If court Judgment, date obtained:</b>  												
<b>4. Secured Claim</b> <input type="checkbox"/> Check box if your claim is secured by collateral (including a right of setoff) <b>Brief Description of Collateral:</b> See below <b>Value of Collateral:</b> _____  <b>Amount of arrearage and other charges at time the case was filed included in secured claim, if any:</b> _____		<b>5. Unsecured Priority Claim</b> <input checked="" type="checkbox"/> Check box if you have an unsecured priority claim <b>Amount entitled to priority:</b> \$515,342.61 <b>Specify Priority Of Claim:</b> <input type="checkbox"/> Wages, Salaries, or commissions (up to \$4650)* earned within 90 days before filing of the bankruptcy petition or cessation or the debtor's business, whichever is earlier. (11 U.S.C. § 507 (a)(3)) <input type="checkbox"/> Contributions to an employee benefit plan (11 U.S.C. § 507 (a)(4)) <input type="checkbox"/> Up to \$2100* of deposits toward purchase, lease, or rental of property or services for personal, family or household use (11 U.S.C. § 507 (a)(6)) <input type="checkbox"/> Alimony, maintenance, or support owed to a spouse, former spouse or child (11 U.S.C. § 507 (a)(7)) <input checked="" type="checkbox"/> Taxes or penalties owed to governmental units (11 U.S.C. § 507 (a)(9)) <input type="checkbox"/> Other - Specify applicable paragraph of (11 U.S.C. § 507 (a)( ) )												
<b>6. Total Amount of Claim at Time Case was Filed</b>  <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 30%;">SECURED</td> <td style="width: 30%; text-align: right;">\$0.00</td> <td style="width: 40%;"></td> </tr> <tr> <td>UNSECURED PRIORITY</td> <td style="text-align: right;">\$515,342.61</td> <td></td> </tr> <tr> <td>UNSECURED GENERAL</td> <td style="text-align: right;">\$42,655.00</td> <td></td> </tr> <tr> <td><b>TOTAL</b></td> <td style="text-align: right;"><b>\$557,997.61</b></td> <td></td> </tr> </table>		SECURED	\$0.00		UNSECURED PRIORITY	\$515,342.61		UNSECURED GENERAL	\$42,655.00		<b>TOTAL</b>	<b>\$557,997.61</b>		* Amounts are subject to adjustment on 4/1/04 and every 3 years thereafter with respect to cases commenced on or after the date of adjustment.
SECURED	\$0.00													
UNSECURED PRIORITY	\$515,342.61													
UNSECURED GENERAL	\$42,655.00													
<b>TOTAL</b>	<b>\$557,997.61</b>													
<b>7. Credits:</b> The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim. <b>8. Supporting Documents:</b> Attach copies of supporting documents, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, court judgments, mortgages, security agreements, and evidence of perfection of lien. <b>DO NOT SEND ORIGINAL DOCUMENTS.</b> If the documents are not available, please explain. If the documents are voluminous, attach a summary. <b>9. Date Stamped Copy:</b> To receive an acknowledgment of the filing of your claim, enclose a stamped, self-addressed envelope and copy of this proof of claim.		THIS SPACE IS FOR COURT USE ONLY												
Date 07/30/2004	Sign and print the name and title of any of the creditor or other person authorized to file this claim <div style="text-align: center;">             Nancy S. Benham            Bankruptcy Unit            Tel. (208) 334-7642         </div>													
Penalty for presenting fraudulent claim: Fine up to \$500,000 or imprisonment for up to 5 year, or both. 18 U.S.C. §152 and §3571														

EXHIBIT A

# Proof of Claim - State Tax Liability Itemization

STC Form 10  
Attachment

Idaho State Tax Commission  
Bankruptcy Unit  
P.O. Box 36  
Boise, ID 83722

Case Number: 03-21652  
Chapter: 7A

## NOTES:

# Period has priority status. Assessed within 240 days of bankruptcy petition date.

### UNSECURED PRIORITY CLAIMS

Note	Taxpayer ID	Taxpayer ID	Tax Type	Tax Period	Tax Due	Interest to Petition Date	Total
#	8816	1485	Indv Income	Dec 1997	\$113,445.00	\$44,998.82	\$158,443.82
#	8816	1485	Indv Income	Dec 1998	\$266,892.00	\$85,273.82	\$352,165.82
#	8816	1485	Indv Income	Dec 1999	\$3,797.00	\$935.97	\$4,732.97

Total Amount of Unsecured Priority Claims: \$515,342.61

### UNSECURED GENERAL CLAIMS

Note	Taxpayer ID	Taxpayer ID	Tax Type	Tax Period	Tax Due	Interest to Petition Date	Total
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Penalty to date of petition on unsecured priority claims (including interest thereon) . . . . . \$42,655.00

Total Amount of Unsecured General Claims: \$42,655.00